

CMS Library  
C2-07-13  
7500 Security Blvd.  
Baltimore, Maryland 21244

## GOVERNMENT REFORM AND SAVINGS ACT OF 1993

NOVEMBER 15, 1993—Ordered to be printed

Mr. STUDDS, from the Committee on Merchant Marine and Fisheries, submitted the following

### REPORT

[To accompany H.R. 3400]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries to whom was referred the bill (H.R. 3400) to provide a more effective, efficient, and responsive government, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 118, line 9, strike all of Subtitle A through page 119, line 9.

On page 118, beginning at line 9 insert:

#### **Subtitle A—Authority To Establish Reemployment Rights for Certain Merchant Seamen**

##### **SEC. 11001. SHORT TITLE.**

This subtitle may be cited as the “Merchant Seamen Reemployment Rights Act of 1993”.

##### **SEC. 11002. REEMPLOYMENT RIGHTS FOR CERTAIN MERCHANT SEAMEN.**

(a) IN GENERAL.—Title III of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131) is amended by inserting after section 301 the following new section.

“SEC. 302. (a) An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

“(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

"(c) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

"(1) determine whether or not the individual—

"(A) was employed in the activation or operation of a vessel—

"(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

"(ii) that is requisitioned or purchased under section 902 of this Act; or

"(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

"(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46, United States Code; and

"(2) if the Secretary makes affirmative determinations under paragraph (1)

(A) and (B), certify that individual under this subsection.

"(d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate referred to in clause (1) of section 4301(a) of title 38, United States Code."

(b) APPLICATION.—The amendment made by subsection (a) shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936, as amended by subsection (a), occurring after August 2, 1990.

(c) EMPLOYMENT ENDING BEFORE ENACTMENT.—Notwithstanding subsection (b) of section 302 of the Merchant Marine Act, 1936, as amended by this Act, an individual who, in the period beginning August 2, 1990, and ending on the date of the enactment of this Act, completed a period of employment described in subsection (c)(1)(A) of that section may submit an application for certification under subsection (c) of that section with respect to that employment not later than 45 days after the date of the enactment of this Act.

(d) REGULATIONS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations implementing this section.

## PURPOSE OF THE BILL

The purpose of H.R. 3400 is to provide a more effective, efficient, and responsive government

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 3400, the Government Reform and Savings Act of 1993, was introduced by Mr. Gephardt on October 28, 1993. The bill was referred jointly to 17 Committees, including the Committee on Merchant Marine and Fisheries, for a period ending no later than November 15, 1993.

The bill contains approximately 45 recommendations of Vice President Gore's National Performance Review (NPR) Task Force to consolidate and streamline Government programs. The NPR began on March 3, 1993, when President Clinton asked Vice President Gore to conduct a six-month review of how the Federal Government works. On October 26, 1993, President Clinton transmitted the NPR recommendations to Congress in the form of proposed legislation, the Government Reform and Savings Act of 1993 (H. Doc. 103-155).

Subtitle A of Title XI of H.R. 3400 is a provision within the jurisdiction of the committee on Merchant Marine and Fisheries. Subtitle A amends the Merchant Marine Act, 1936 to require the Secretary of Transportation (Secretary), beginning with the class en-



tering the United States Merchant Marine Academy (Academy) in 1995, to charge tuition and impose fees on individuals attending the Academy to recover up to one-half the total operating costs of the Academy, as well as to impose reasonable fees on cadets for all required uniforms and textbooks.

Students graduating from the Academy are required to adhere to certain post-graduate Federal requirements (the obligations are set forth below). H.R. 3400 does not change the obligations required to be performed by graduates of the Academy.

Subtitle A also authorizes the Secretary to provide any cadet allowances for transportation (including reimbursement of travelling expenses) while travelling under orders as a cadet of the Academy. Under current law (46 App. U.S.C. 1295b(d)), the Secretary is already authorized to provide cadets with uniforms, textbooks, and allowances for transportation and expenses while travelling under orders as a cadet of the Academy, so this part of subtitle A is unnecessary.

The Academy was established under the Merchant Marine Act, 1936. The Academy opened at its present site, Kings Point, New York, in 1943. In 1949, the Academy became fully accredited; and, in 1956, it became a permanent institution by an Act of Congress. In 1974, the Academy became the first Federal service school to enroll women students. Currently, there are 967 students enrolled at the Academy.

The academic program at the Academy is nationally accredited by the Middle States Association of Colleges and Schools. Academy students graduate with a Bachelor of Science Degree. In addition, students are required to graduate with a merchant marine license as a third mate or third assistant engineer. They are also required to apply for, and accept if offered, a commission as an ensign in the United States Naval Reserve, United States Coast Guard Reserve, or any other reserve component of the Armed Services.

The costs of tuition, room, board, books, initial issuance of uniforms, and travel while under orders are provided to the cadets by the Federal Government. The cadets are required to pay mandatory fees for certain supplies not provided by the Government. According to the Academy's catalogue, the mandatory fees total \$5,787 over four years.

The Academy imposes obligations on cadets entering Kings Point. The cadets are required to:

- (1) Complete a course of instruction at the Academy;
- (2) Fulfill the requirements for a license as an officer in the merchant marine before graduation;
- (3) Maintain a license as an officer in the merchant marine for at least six years;
- (4) Apply for, and accept if offered, an appointment as a commissioned officer in the U.S. Naval Reserve, Coast Guard Reserve, or any other reserve component of the Armed Services for at least eight years;
- (5) Serve in the domestic and foreign commerce and national defense of the United States for at least five years as:
  - (a) A merchant marine officer;
  - (b) An employee in a U.S. maritime-related industry;

(c) A commissioned officer in the Armed Services or the National Oceanic and Atmospheric Administration (NOAA) Corps; or

(d) Any combination of the above;

(6) Report to the Academy on compliance with their Federal obligations.

Failure to fulfill academic obligations may result in a cadet's being ordered to active Naval duty for a period not to exceed two years. Failure to fulfill any of the other requirements may result in an Academy graduate's being ordered to active Naval duty for a period not to exceed three years.

The proposal to charge tuition to recover one half of the Academy's operating costs was one of the NPR recommendations pertaining to the maritime industry. It was referenced in Appendix A of the NPR's report, entitled "Creating a Government That Works Better and Costs Less," of September 7, 1993.

The Committee has not had the opportunity to hold hearings on the recommendation and justification for charging tuition at the Academy. This would be a major policy change in the administration of the U.S. Merchant Marine Academy and would make its operation unique among the five Federal service academies. In the coming months, the Committee intends to thoroughly review this proposal and to hold hearings to evaluate the merits of charging tuition of the Merchant Marine Academy. After this review, the Committee intends to recommend appropriate changes to the law, if necessary to carry out the purposes of the 1936 Act establishing the Academy.

#### COMMITTEE ACTION

On November 9, 1993, the Committee on Merchant Marine and Fisheries met to mark up H.R. 3400. Chairman Studds requested that Merchant Marine Subcommittee Chairman Lipinski hold hearings on the proposal to charge tuition at the Merchant Marine Academy.

The Committee adopted by voice vote an amendment offered by Mr. Ackerman, on behalf of Mr. Manton, Mr. King, Mr. Hochbrueckner, and Mr. Levy, to strike all of subtitle A of Title XI, the proposal to assess tuition and other charges beginning in 1995.

The Committee then adopted by voice vote an amendment offered by Mr. King, on behalf of Mr. Lipinski and Mr. Fields, inserting as new subtitle A the text of H.R. 1109 to provide merchant mariners who served in Desert Shield/Desert Storm, and those who will serve in future deployment efforts, substantially equivalent reemployment rights as those granted returning military reservists.

H.R. 1109 was introduced by Mr. Lipinski on February 24, 1993. Original cosponsors include are Mr. Studds, Mr. Fields of Texas, Mr. Tauzin, Mr. Young of Alaska, Mr. Ortiz, Mr. Bateman, Mr. Manton, Mr. Saxton, Mr. Taylor of Mississippi, Mr. Inhofe, Ms. Schenk, Mr. King, Mr. Green, Mr. Hastings, Mr. Reed, Mr. Stupak, Mr. Ackerman, Mr. Andrews of Maine, Mr. Kingston, and Mr. Pickett. On March 16, 1993, H.R. 1109 passed the House of Representatives under Suspension of the Rules by a vote of 403-0.

Testimony received by the Committee in April 1991 on sealift readiness confirmed the need to provide reemployment rights to



merchant mariners. (See Printed Hearings No. 102-57). General Hansford T. Johnson, USAF, then the Commander-in-Chief of the United States Transportation Command, stated that, during Desert Shield/Desert Storm, trained mariners were ready to go to sea but, because they had no "rehire rights," they could not risk losing their civilian jobs. Consequently, the United States and to rely on pensioners who were in their sixties, seventies, and even eighties.

The reemployment rights granted by H.R. 1109 and H.R. 3400, as amended, will be substantially equivalent to those granted in chapter 43 of title 38, United States Code, for a member of a reserve component, but will be administered by the Secretary of Transportation (Secretary). An individual who meets certain specific criteria simply applies for certification from the Secretary within 45 days after completion of service on a qualifying vessel. The Secretary has 20 days to make a determination that the merchant mariner was employed on a vessel during a period of activation.

Activation of RRF vessels may occur at times other than during a war or a national emergency. The amendment includes a provision to provide reemployment rights when vessels are activated for training or during readiness exercises.

The Committee recognizes that the time constraints placed on the merchant mariner and the Secretary are necessarily compressed; however, proof-of-service requirements which exist under current law make the determination by the Secretary largely a ministerial review.

The King-Lipinski-Fields amendment does not create a Merchant Marine Reserve, nor does it confer veterans' status on merchant mariners.

The bill, as amended, was ordered reported by the Committee on Merchant Marine and Fisheries to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

Section 11001 contains the short title of subtitle A of title XI, the Merchant Seamen Reemployment Rights Act of 1993.

Section 11002 grants reemployment rights to merchant seamen who are employed in the activation and operation of a vessel used by the United States for a war, armed conflict, national emergency, or maritime mobilization need.

This section provides reemployment rights to merchant seamen who participated in the Desert Shield/Desert Storm sealift operations. These rights, which are substantially equivalent to those granted returning military reservists, will also allow mariners who volunteer in the future for service on sealift vessels to regain their civilian jobs when they return from shipboard duty.

This provision is similar to the reemployment rights granted in title 38, United States Code, and is intended to allow the retention of the large body of case law which has developed since reemployment rights were first granted to returning service men and women over 50 years ago. Even though this amendment (which protects merchant mariners) and the veterans' reemployment rights provisions of Federal law will be administered by different agencies, enforcement and the appropriate interpretations of the legislative

text will be handled by the Attorney General and the Federal judiciary, respectively, thus ensuring consistent treatment for merchant mariners.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 3400 will have no significant inflationary impact on prices and costs in the operation of the national economy.

#### COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate by the Committee of the costs which would be incurred in carrying out H.R. 3400. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 3400 have been made by the Committee during the 103rd Congress.

2. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 3400 does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. According to CBO, the committee's amendment to H.R. 3400 to strike subtitle A of title XI would result in new direct spending of \$21.6 million over the next five fiscal years, compared to the introduced bill. However, the committee's action maintains the status quo with respect to charging tuition at the Merchant Marine Academy; consequently the net effect of the committee's amendment will be that no direct spending will result.

3. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Operations on the subject of H.R. 3400.

4. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for its amendments to H.R. 3400 from the Director of the Congressional Budget Office.



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, November 15, 1993.

Hon. GERRY E. STUDDS,  
*Chairman, Committee on Merchant Marine and Fisheries,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed amendments made to H.R. 3400, the Government Reform and Savings Act of 1993, as ordered reported by the House Committee on Merchant Marine and Fisheries on November 9, 1993. Relative to the introduced version of the bill, we estimate that the committee's amendments would result in new direct spending of \$3.1 million in fiscal year 1996 and a total of \$21.6 million through 1998. Therefore, pay-as-you-go procedures would apply to the amendments.

The committee's amendments to H.R. 3400 would delete subtitle A of title XI, which would phase in new tuition and other fees for the U.S. Merchant Marine Academy. This would result in lost receipts, relative to H.R. 3400 as introduced, of \$3.1 million in 1996, \$6.9 million in 1997 and \$11.6 million in 1998, or total new direct spending of \$21.6 million over the 1994-1998 period.

The amendments also would add language providing for reemployment rights for certain merchant seaman. This provision would have no impact on the federal budget.

Enactment of this legislation would have no impact on the budgets of state or local governments.

If your wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JAMES L. BLUM  
(For Robert D. Reischauer, Director).

## DEPARTMENTAL REPORTS

The Committee has received no departmental reports on H.R. 3400.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italics, existing law in which no change in proposed is shown in roman):

[The following concerns that portion of H.R. 3400 under the jurisdiction of the Merchant Marine and Fisheries Committee, title XI, Subtitle A, which is reported on herein.]

## THE MERCHANT MARINE ACT, 1936

## TITLE III—AMERICAN SEAMEN

SEC. 301. (a) \* \* \*

(b) Every contract executed under authority of titles VI and VII of this Act shall require—

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

(3) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officers' identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

*SEC. 302. (a) An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.*

*(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.*

*(c) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—*

*(1) determine whether or not the individual—*

*(A) was employed in the activation or operation of a vessel—*

*(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;*

*(ii) that is requisitioned or purchased under section 902 of this Act; or*

*(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobi-*



*lization need (including for training purposes or testing for readiness and suitability for mission performance); and*

*(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46, United States Code; and*

*(2) if the Secretary makes affirmative determinations under paragraph (1) (A) and (B), certify that individual under this subsection.*

*(d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate referred to in clause (1) of section 4301(a) of title 38, United States Code.*





CMS Library  
C2-07-13  
7500 Security Blvd.  
Baltimore, Maryland 21244

CMS LIBRARY



3 8095 00010075 6